

25X1

To: John Maury

Re: New proposal for amending S. 782 (with comparison to previous amendment)

Note: The final wording of the proposed amendment has not been completed. This is only the rough draft.

Received 69
13 Aug

COMPARISON OF PROPOSED AMENDMENTS TO S. 782**COPY**

1. Amendment discussed before Subcommittee:
 - (a) exemption of F.B.I., N.S.A., and C.I.A. from section 1, subsection k, section 4, and section 5 "if the head of the agency determines that the above-specified provisions cannot be applied in a manner consistent with national security requirements and considerations."
 - (b) Provided, that "nothing contained in this section shall be construed to prohibit an employee of any agency contemplated by this section, who is under investigation for misconduct, from having present during interrogation which could lead to disciplinary action, or seeking advice and counsel of, a fellow employee of his choice from such agency."
 - (c) Provided, that "nothing contained in this section shall be construed to prevent an employee of any agency contemplated by this section claiming to be affected or aggrieved by any violation or threatened violation of this Act from filing a written complaint with the Board on Employee's Rights."
 - (d) Provided, that "such complaint may be filed only after all procedures for adjudication such complaints within the agency concerned have been exhausted and a final adverse decision has been rendered in writing by the head of the agency concerned."
 - (e) Provided, that "nothing in this Act shall affect or modify the authority of the Director of Central Intelligence Agency as set forth in section 102(c) of the National Security Act of 1947, as amended, or the authorities set forth in Subchapter III of Title 50 of the U.S. Code (P. L. 88-290)."

This would be a new section 8.

2. Rough wording of new language as proposed by Senator Ervin:
 - (a) Section 1, subsection k, page 8, at line 5, after the word "request" strike the period and insert the following:
";Provided, however, that a civilian employee of the United States serving in the C.I.A., the N.S.A., or the F.B.I. may be accompanied by counsel, or by a person of his choice who serves in the agency in which the employee serves, who has been cleared as a good security risk by that agency for the purpose of the case."
 - (b) Section 6, on page 19, at line 2, after the word "each", strike "individual to be so tested or examined" and insert the following:
"grade or category of duties"
 - (c) Add a proviso to Section 7, page 19, at line 16. After the words "employee rights:" insert the following:
Provided further, however, that no civilian employee of the United States serving in the C.I.A., the N.S.A., or the F.B.I. shall be permitted to invoke the provisions of sections 4 and 5 unless he has first complained in writing to the agency in which he serves about the threatened or actual violation of this Act and afforded such agency 120 days from the date of such complaint in which to prevent the threatened violation or to redress the actual violation;

COPY

Provided further, however, that nothing in this Act shall be construed to affect any existing authority of the directors of the Central Intelligence Agency under 50 USC 403(c), the National Security Agency under 50 USC 833, and the Federal Bureau of Investigation under 28 USC 536 to terminate the employment of any employee.

(d) On page 19, line 20, add a new Section 8:

"SEC. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the C.I.A., the N.S.A., or the F.B.I. to protect or withhold government information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be receivable in evidence in any interrogation under section 1, subsection, or in any civil action under section 4, or in any proceeding or civil action under section 5.

Major differences between amendment 1 and 2

1. Amendment 2 extends the employee's right to counsel by allowing outside counsel if the agency clears counsel as a good security risk for the purpose of the case. see 2(a) and 1(b)
2. Amendment 2 limits the time for adjudication of the complaint within the agency to 120 days. see 2(c) and 1 (c) and 1(d)
3. Amendment 2 allows the Director of the agency or his designee to make a personal finding on the necessity of the tests stipulated in Section 6 with regard to grade or category of duties. see 2(b)
4. Amendment 2 uses different language for safeguarding the present powers of the agencies and protecting government secrets. see 2(b) and 2(d) and 1(a) and 1(e)

Questions concerning amendment 2

Does Does 2(b) and 2(d) provide sufficient safeguards for retaining necessary powers and protecting government secrets?

2. Is 120 days enough time to adjudicate every possible complaint?
3. 2(e) replaces "individual" with "grade or category of duties." Would it be desirable or necessary to include both; i.e. "...individual, grade, or category of duties to be so tested."

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- (b) Provided, that "nothing contained in this section shall be construed to prohibit an employee of any agency contemplated by this section, who is under investigation for misconduct, from having present during interrogation which could lead to disciplinary action, or seeking advice and counsel of, a fellow employee of his choice from such agency."
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- (b) Section 6, on page 19, at line 2, after the word "each", strike *agency for acc to cl. information* and insert the following:
"individual to be so tested or examined" and insert the following:
"grade or category of duties"
- (c) Add a proviso to Section 7, page 19, at line 16. After the words *involve* "employee rights:" insert the following:
Provided further, however, that no civilian employee of the United States serving in the C.I.A., the N.S.A., or the F.B.I. shall be permitted to invoke the provisions of sections 4 and 5 unless he has first complained in writing to the agency in which he serves about the threatened or actual violation of this Act and afforded such agency 120 days from the date of such complaint in which to prevent the threatened violation or to redress the actual violation;
Provided that the above period of 120 days may be extended by the calculating or it is deemed necessary on a period of time determined by the standards of the agency concerned;

COPY

Provided further, however, that nothing in this Act shall be construed to affect any existing authority of the directors of the Central Intelligence Agency under 50 USC 403(c), the National Security Agency under 50 USC 833, and the Federal Bureau of Investigation under 28 USC 536 to terminate the employment of any employee.

(d) On page 19, line 20, add a new Section 6:

"SEC. 6. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the C.I.A., the N.S.A., or the F.B.I. to protect or withhold [government] information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be receivable in evidence in any interrogation under section 1, subsections, or in any civil action under section 4, or in any proceeding or civil action under section 5.

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